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10/520,854	01/11/2005	John Alan Gervais	PU020335	2672
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Joseph J. Laks			KIM, TAE K	
THOMSON LICENSING LLC			ART UNIT	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/520,854

Applicant(s)

GERVAIS ET AL.

Examiner

Tae K. Kim

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is in response to the Applicant's response filed on November 9, 2007.

Claim 8 has been cancelled by the Applicant. Claims 20 and 21 have been added by the Applicant. Claims 1 – 7 and 9 - 21, where Claims 1 and 16 are in independent form, are presented for examination.

#### ***Specification***

The objection to the Specification has been withdrawn by the Examiner. Corrections have been made by the Applicant.

#### ***Claim Objections***

With regards to the objection to Claim 6, Applicant has amended the claim. The Examiner had withdrawn the objection.

With regards to the objection to Claim 16, Applicant has amended the claim. The Examiner had withdrawn the objection.

Claim 20 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. A non-source-indicating parameter has broader scope than the prior claim, Claim 19, since header format version and header size are "non-source-indicating parameters."

#### ***Response to Arguments***

Applicant's arguments with respect to Claims 1 – 7 and 9 – 21 have been considered but are moot in view of the new ground(s) of rejection necessitated by Applicant amendments.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1 – 5, 7, 9 – 12, and 14 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,986,133 B2, invented by Michael D. O'Brien et al. (hereinafter "O'Brien"), in view of U.S. Patent 5,991,774, invented by Allan R. Tate et al. (hereinafter "Tate").**

1. Regarding Claims 1, 3, 7, 14, and 16, O'Brien discloses a system and method of receiving an application level gateway (ALG) file (Fig. 2; Col. 6, Lines 34-55; agent fetches file from the server) at a bi-directional communication device (Fig. 1; Col. 4, Lines 22-25; another server or any other interconnect system, also called a gateway), comparing at least one compatibility parameter of said ALG file with features of said bi-directional communications device (Col. 5, Lines 55-58; Col. 12; Lines 48-54; upgrade policy defining which IP address or hostname of the server will provide updates and the "serverName" component parameter specifying the IP address or host name of the server the agent will inquire about the update), and storing the ALG file at the communications device in response to a favorable comparison of at least one compatibility parameter (Col. 5, Lines 55-58; Col. 12; Lines 48-54; if the "serverName" component parameter matches the IP address or hostname of the server carrying the

particular updates match, the upgrade process will start and the agent will download the upgrade). O'Brien does not specifically disclose that at least one compatibility parameter of said ALG file with at least one of at least one features of said bi-directional communications device and at least one non-signature feature expected in received and authentic ALG files by said bi-directional communications device.

Tate discloses a method of uniquely identifying files providing a system for file security using at least one non-signature feature expected in received and authentic ALG files by said bi-directional communications device (Abstract; Col. 2, Lines 4-11; CRC system on the transferred files to compute the CRC value for the file including a header to identify the body of the file as being a CRC file). Furthermore, the use of a library file with a unique identification number will verify each version to determine if it is to be installed on the desired device (Col. 3, Lines 26-33; controls data traffic). The unverified files would not be used and discarded (Col. 2, Lines 8-11). It would be obvious to one skilled in the art to apply the method disclosed in Tate to the system and method disclosed in O'Brien to use CRC conversions on the header of the file and the body of the file. This would improve security and to verify the files that are being transferred to the communication device are not corrupted. Tate's method further provides protection of the files against viruses, tampering, or corruption (Col. 2, Lines 28-33).

2. Regarding Claims 2 and 17, O'Brien, in view of Tate, discloses all the limitations of Claims 1 and 16 above. O'Brien further discloses of rejecting the ALG file at the communications device in response to an unfavorable comparison of at least one

compatibility parameter (Col. 5, Lines 27-30, 32-34; upgrade policies allow system administrators to determine which target devices will or will not receive a specific upgrade).

3. Regarding Claim 4, O'Brien, in view of Tate, discloses all the limitations of Claim 1 above. Tate further discloses that it was well known in the art at the time of the invention that software loaders used the file size stored in the file header to check for integrity of the file itself. It would have been obvious to one skilled in the art to also check the file size to verify that the file has not been corrupted. This would improve the security and data error detection of a file updating system.

4. Regarding Claim 5, O'Brien, in view of Tate, discloses all the limitations of Claim 1 above. Tate discloses that a prior method of verifying that a received file is not corrupted was by having a specific file type defined to have a header having a CRC (Col. 1, Lines 26-29). The method and system disclosed in Tate is an improvement upon this common technique of defining files to provide security within an automated file updating system. It would be obvious to one skilled in the art to attach a CRC header to a packet to improve security and to verify the files that are being transferred to the communication device are not corrupt, a virus, or modified.

5. Regarding Claims 9 and 10, O'Brien, in view of Tate, discloses all the limitations of Claim 1 above. O'Brien further discloses that at least one compatibility parameter comprises a hardware family version (Col. 12, Lines 5-25; "component" parameter defines the component hardware that requests the update) and at least one compatibility parameter comprises a software family version (Col. 12, Lines 5-18, 27-30,

41-43; "version" parameter defines the software version already stored in the component and the agent will only request upgrades that only apply to that version).

6. Regarding Claims 11 and 18, O'Brien, in view of Tate, discloses all the limitations of Claims 1 and 16 above. O'Brien discloses several types of bi-directional devices that can implement the disclosed system and method (Fig. 1; Col. 4, Lines 23-26; devices can be a monitor, printer, copier, cell phone, PDA, etc.). However, O'Brien or Tate do not specifically disclose that the bi-directional communication device is a cable modem.

Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, i.e. cable modem is a bi-directional communication device, are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

7. Regarding Claim 12, O'Brien, in view of Tate, discloses all the limitations of Claim 1 above. O'Brien further discloses that the system periodically polls a service provider to determine if at least one of a new and updated ALG file is available, then sends a request for an available ALG file and receives said requested ALG file from an access network (Col. 4, Lines 28-30, 56-59; agent polls the server for updates and, if an update is available, fetches and applies the update to the device).

8. Regarding Claims 15, 19, and 20, O'Brien, in view of Tate, discloses all the limitations of Claims 1 and 16 above. O'Brien further discloses that at least one compatibility parameter comprises a hardware family version (Col. 12, Lines 5-25; "component" parameter defines the component hardware that requests the update) and at least one compatibility parameter comprises a software family version (Col. 12, Lines 5-18, 27-30, 41-43; "version" parameter defines the software version already stored in the component and the agent will only request upgrades that only apply to that version).

Tate further discloses the use of a CRC header to determine the compatibility of a particular file (Col. 1, Lines 26-29) and the use of a header to identify the body of the file as being a CRC computed file (Abstract; Col. 2, Lines 4-11). It would be obvious to one skilled in the art to combine the teaching in Tate with the system and method disclosed in O'Brien to use CRC conversions on the header of the file and the body of the file. This would improve security and to verify the files that are being transferred to the communication device are not corrupted. Tate's method further provides protection of the files against viruses, tampering, or corruption. The additional level of protection decreases the likelihood that any malicious or corrupt files will be autonomously downloaded into one of the connected devices.

9. Regarding Claim 21, O'Brien, in view of Tate, discloses all the limitations of Claim 1 above. O'Brien also discloses that at least one feature of said bi-directional communications device comprises an amount of available memory in said bi-directional communications device to store the ALG file (Fig. 2; Col. 7, Lines 15-21; upgrade agent

in the firewall fetches all chunks of the upgrade file and rebuilds the file before the agent performs a security check).

**Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien, in view of Tate, and further in view of U.S. Patent 5,964,831, invented by Kevin A. Kearns et al. (hereinafter "Kearns").**

10. Regarding Claim 6, O'Brien, in view of Tate, discloses all the limitations of Claim 1 above. O'Brien or Tate, however, do not specifically disclose that at least one compatibility parameter comprises a header size of said ALG file.

Kearns discloses that a compatibility parameter comprises a header size of said ALG file (Fig. 9; Col. 9, Line 62 - Col. 10, Line 19; application header size can be used to identify the source and destination of a message). It would be obvious to one skilled in the art to vary the application header field between different destinations to improve the identification of the source or destination of the files. This would decrease the likelihood that any malicious or corrupt files will be autonomously downloaded into one of the connected devices.

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien, in view of Tate, and further in view of U.S. Patent 6,031,830, invented by Paul A. Cowen (hereinafter referenced as "Cowen").**

11. Regarding Claim 13, O'Brien, in view of Tate, discloses all the limitations of Claim 1 as stated above. O'Brien or Tate, however, do not specifically disclose that the request to download the files occurs after a configuration file is identifying at least one new or updated ALG file is received and first compared by the device.

Cowan discloses a system and method of downloading new or updated files where the device receives a configuration file from said service provider, which identifies at least one new or updated ALG files, then the devices sends a request for those files, and receives the requested files from an access network (Figs. 7(a) – (h); Col. 10, Lines 27 – Col. 11, Line 54; terminal requests query to host/server, which in turn sends a package definition packet identifying the file; terminal then compares versions and if they are different, terminal transmits the file request packet and the host/server begins transmitting file data). It would be obvious to one skilled in the art at the time of the invention to verify that the files are new or updated before downloading them into the terminal. Not only will that save resources that would have been used if the files are downloaded and then verified, but it also prevents the terminal from accidentally deleting the prior version of the files prior to completing the download of the new or updated files.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess, can be reached on (571) 272-3949. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

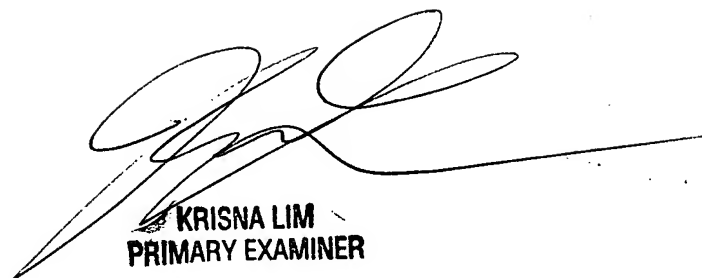
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

TKK

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**KRISNA LIM**  
**PRIMARY EXAMINER**